



**Njeru Nyaga & Co. Advocates v Muriuki (Environment & Land Miscellaneous
Case 65 of 2020) [2022] KEELC 2435 (KLR) (5 May 2022) (Ruling)**

Neutral citation: [2022] KEELC 2435 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND MISCELLANEOUS CASE 65 OF 2020**

EK WABWOTO, J

MAY 5, 2022

BETWEEN

NJERU NYAGA & CO. ADVOCATES APPLICANT

AND

ERASTUS THORONJO MURIUKI RESPONDENT

RULING

1. The Application for consideration by the court is the one dated 13th October 2021. The Application seeks the following orders: -
 - i. Spent.
 - ii. That this court be pleased to vary/set aside the decision of the taxing master delivered on August 19, 2021 and remit the advocate/client bill of costs dated March 13, 2020 to a different taxing master for taxation.
 - iii. That in the alternative, this honourable court re-asses the costs due to the applicant in the dismissed advocate/client bill of costs dated March 13, 2022.
 - iv. That the costs if this Application be provided for.
2. The Application was supported by the grounds on its face and the supporting affidavit sworn by Martin Njeru Nyaga on October 13, 2021.
3. The Respondent opposed the application and filed a Replying Affidavit sworn on February 7, 2022 which reiterated the position that there was an agreement on fees payable to the advocates negotiated from Ksh 58,000/ to Ksh 50,000/- and further that the Advocate did not execute the instructions that were given.



4. The application was canvassed through written submissions. The Applicant's relied on their submissions dated March 4, 2022 while the Respondent filed their written submissions dated March 11, 2022.
5. It was the Applicant's submission that the Taxing Master erred in law and principle by misapprehending and grossly misdirected herself on the principles of law thereby arriving at an erroneous decision. It was argued that she failed to differentiate the difference between legal fees and retainer fees.
6. Counsel further submitted that while the client paid a retainer fees of Ksh 50,000/- the same should not be construed as legal fees since the Advocate had undertaken a lot of work and further in their bill of costs, the same had been deducted as having been paid by the client.
7. The Applicant conclude their submissions by urging the Court to set aside the Taxing Master's decision and direct that the bill of costs be remitted for taxation before a different Taxing Master.
8. The Respondent opposed the application on various grounds. Counsel submitted that the Taxing Master's Ruling dated August 19, 2021 should not be disturbed in whatever manner.
9. Counsel submitted that the Taxing Master was correct in her finding that there was indeed a retainer agreement and she did not confuse a retainer with a retainer agreement and further that she was clear that what constituted a retainer agreement were the email correspondences which were produced before her. The Respondent also urged the Court to dismiss the reference.
10. I have carefully considered the Application together with the supporting affidavit, the replying affidavit and the written submissions made by the learned counsel.
11. In my view, there is only one issue that this Honourable court is called upon to decide and that is, whether a retainer agreement existed between the firm of Njeru, Nyaga & Co. Advocates and the Respondent herein.
12. In the case of *Omulele & Tollo Advocates vs Mount Holdings Ltd* C.A.75 of 2015 which the court held;

“ A retainer means the instruction, employment or engagement of an advocate by his client.

On the other hand, a retainer agreement is merely a contract in writing prescribing the terms of engagement of an advocate by his client, including fees payable. Therefore, it is submitted while a retainer denotes a relationship between parties, the retainer agreement is merely the physical written document or manifestation of such a relationship...
13. A retainer agreement does not necessarily have to be in writing but may also be inferred from the conduct of the parties or the circumstances of the case. In the reference before this court, the Taxing Master referred to the email correspondence between the parties which according to her was evident that the parties had entered into a retainer agreement.
14. I have keenly perused the taxing officer's decision and reasons for it. In my view, the taxing officer considered the material placed before her and properly found the existence of the retainer agreement though the email correspondence that I have alluded to earlier. On this, the taxing officer was right.
15. It is, therefore, the finding by this Honourable Court that there was a retainer agreement between the Applicant and the Respondent. I find no merit in the Application dated October 13, 2021 and the same is dismissed with no orders as to costs.
16. It is so ordered.



DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 5TH DAY OF MAY 2022

E. K. WABWOTO

JUDGE

In the presence of: -

Ms. Njue for the Advocate.

Mr. Njuguna the Respondent.

Court Assistant; Caroline Nafuna.

